

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08HD-168

HAWAII

Consent to Assign General Lease No. S-5436, Minnie H.E. Kaawaloa, Assignor, to Jesse K. Kaawaloa, Assignee, Lot 36, Kalapana Section, Kikala-Keokea, Puna, Hawaii, Tax Map Key: 3rd/ 1-2-43:36.

APPLICANT:

Minnie H.E. Kaawaloa, as Assignor, to Jesse K. Kaawaloa (aka: Jesse Kawaaloa, Jesse Kaawaloa Sr., Jesse Keaniniulaokalani Kaawaloa, and Jesse Keaniniulaokalani Kaawaloa Sr.), single, Tenant in Severalty, whose mailing address is 15-157 Puni Kahakai, Pahoa, Hawaii 96778, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lot 36, Kalapana Section, Kikala-Keokea Residential Subdivision situated at Kikala and Keokea, Puna, Hawaii, identified by Tax Map Key: 3rd/ 1-2-43: 36, as shown on the attached map labeled Exhibit A.

AREA:

1.05 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

The lessee shall use or allow the premises leased, to be used solely for residential Purposes as the lessee's primary domicile, provided that the following additional uses shall be permitted:

1. Storage of boats, fish catch, fishing nets and other fishing related implements;
2. Raising and keeping of small livestock and poultry for subsistence purposes only, except that the raising of swine (also called hogs and pigs) on the leased premises shall be prohibited; and
3. Cultivation of farm and agricultural crops for subsistence purposes (or home consumption only and not for sale), including herbal plants.

TERM OF LEASE:

65 years, commencing on January 1, 1997 and expiring on December 31, 2061. First scheduled rental reopening is for January 1, 2022.

ANNUAL RENTAL:

\$132 per annum. Payable in advance, in semi-annual installments of \$66, on the First Day of January and July of each and every year.

CONSIDERATION:

Gratis

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR/ASSIGNEE:

Not applicable. Assignor/Assignee are individuals and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant/Assignee shall be required to:

1. Submit a basic homeowner's liability insurance/ Certificate of Liability Insurance for the property as required under the lease, within sixty (60) days of this approval; and

2. Execute the Amendment of General Lease No. S-5436 when it is revised and becomes available in Assignee's name.

REMARKS:

Pursuant to the authority granted by the Legislature of the State of Hawaii in Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993 and Act 81, Session Laws of Hawaii 1994, authorized the Department to negotiate and enter into long term residential leases to persons living in Kalapana who were dispossessed or displaced as a result of the volcanic eruptions on the island of Hawaii, which began January 3, 1983 and persons who meet the qualifications of Section 13D-3(b), Hawaii Revised Statutes.

At its meeting of December 16, 1994, Item F-3, the Board authorized the awarding of direct residential leases, pursuant to Act 314 at Kikala-Keokea, Puna, Hawaii. A drawing of lots was conducted on December 9, 1995, and William Kaawaloa Sr. and Minnie H.E. Kaawaloa, husband and wife, as tenants in the entirety, were awarded a 65-year residential lease under General Lease No. S-5436.

At its meeting of November 17, 1995, Item F-9, the Board of Land and Natural Resources approved to amend its prior board action of December 16, 1994 (Item F-3) to revise or delete certain conditions contained in the lease form, relating to authorization to award direct residential leases pursuant to Act 314, Session Laws of Hawaii of 1991, as amended. These amendments included; 1) deletion of lease requirements regarding performance bond, fire insurance, and extended insurance; and 2) that designated successors of the lease be a spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, granddaughter of Lessee.

At its meeting of November 20, 1998, Item D-6, the Land Board authorized Land Division to instruct its Fiscal Office to stop rental billings of the 48 general leases and to amend the lease document to reflect a "new" commencement date.

On April 13, 1999, Mr. William Kaawaloa Sr. passed away.

At its meeting of September 8, 2006, Item D-5, the Board of Land and Natural Resources approved to amend the (48) General Leases awarded for residential purposes by: 1) Authorizing Land Division to instruct its Fiscal Office to commence with billing of lease rents, effective January 1, 2007; and 2) Amend lease terms and conditions of the general leases awarded relating to revisions of rent, liability insurance, improvements, mortgage, construction requirement, and the Kikala-Keokea Residential Community Association.

On December 2006, an amendment document was sent to Lessee for signature. To date, the amendment document has not been executed or returned to the Hawaii District Land Office for processing.

At its meeting of April 11, 2008, Item D-2, the Land Board approved to amend the insurance requirement for the forty-eight Kikala-Keokea general leases awarded for residential purposes, by lowering the amount of coverage required from \$300,000 per occurrence and \$500,000 aggregate to \$100,000 per occurrence/aggregate.

On September 24, 2008, the Hawaii District Land Office received a completed Consent to Assignment Application, Executed Assignment of Lease document, Birth Certificate and Tax Clearances for Jesse K. Kaawaloa.

Staff reviewed the file and reports that in the past two (2) years, two notices of default were sent for failure to provide liability insurance (3/29/07 and 7/11/08). To date, no certificate of liability insurance has been provided. The Lessee has never been cited for any other illegal or unlawful activity on the State property.

Mrs. Kaawaloa owns and resides on another property and has no plans to reside in the Kikala-Keokea Subdivision. As a result, she is requesting that General Lease No. S-5436 be assigned to her son, Jesse K. Kaawaloa. Mr. Kaawaloa has indicated that once the lease is assigned to him, he will be able to obtain the necessary insurance coverage.

Jesse K. Kaawaloa, as Assignee, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Jesse K. Kaawaloa is a qualified Applicant/Assignee for a Kikala-Keokea residential lease, 1) as a person living in Kalapana, who was dispossessed or displaced as a result of the volcanic eruptions which began on January 3, 1983, and 2) as evidenced by his Birth Certificate, which indicates that he is the son of William Kaawaloa Sr. and Minnie H.E. Kaawaloa, who themselves qualified under the Act.

The first rental reopening is scheduled for 1/01/2022. There is no outstanding rental reopening issues.

The Office of Hawaiian Affairs was not solicited for comments as this is not a new encumbrance or change in use.


RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5436 from Minnie H.E. Kaawaloa, as Assignor, to Jesse K. Kaawaloa (aka: Jesse Kawaaloa, Jesse Kaawaloa Sr., Jesse Keaniniulaokalani Kaawaloa, and Jesse Keaniniulaokalani Kaawaloa Sr.), as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and

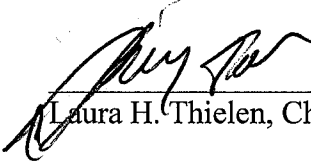
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

